



August 28, 2013

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Dear Ms. Dortch:

**RE: Ex Parte Notice, WC Docket Nos. 13-149, 13-150, Comp. Pol. File Nos. 1112 and 1115, *In the Matter of Application of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Service*; WC Docket No. 13-5, *In the Matter of Technology Transitions Policy Task Force Seeks Comment on Potential Trials*; WC Docket No. 12-153, RM 11358, *In the Matter of the Commission's Copper Retirement Rules***

The National Association of State Utility Consumer Advocates (“NASUCA”) submits this ex parte to state NASUCA’s support for comments filed by other interested parties, and further explain why the Section 214(a) applications of Verizon New Jersey, Inc. and Verizon New York, Inc. (collectively “Verizon”) are contrary to the public interest. NASUCA encourages the Federal Communications Commission (“FCC” or “Commission”) to allow for further public comment prior to a final determination on the merits.

On July 29, 2012, NASUCA, the New Jersey Division of Rate Counsel (“Rate Counsel”), and TURN, The Utility Reform Network (collectively, “Consumer Advocates”)<sup>1</sup> filed joint comments in these very important FCC proceedings. The Commission has before it the applications of Verizon under Section 214(a) of the Communications Act<sup>2</sup> and 47 C.F.R. § 63.71, to grandfather and/or discontinue provision of its wireline telecommunications services, including interstate interexchange and exchange access services in limited parts of New York and New Jersey where copper wireline facilities were destroyed or rendered inoperable by Superstorm Sandy.<sup>3</sup>

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<sup>1</sup> Consumer Advocates’ responsibilities to represent the interests of consumers were set forth in footnote 1 of the July 29 Comments.

<sup>2</sup> 47 U.S.C. § 214(a).

<sup>3</sup> See Public Notices DA 13-1474 (services in New Jersey) and DA 13-1475 (service on Fire Island in New York) released on June 28, 2013 requesting comments by July 29, 2013.

The Consumer Advocates' comments emphasized – as did others' – the precedential impact of this case for consumers. In essence, Verizon is asking the FCC to approve Verizon's decision to cease providing services of a quality and robustness that other Verizon wireline consumers enjoy and expect. Verizon does not want, for its own reasons, to repair and replace its network in the New York and New Jersey communities.<sup>4</sup> Verizon's offer of Voice Link service as a permanent substitute represents a significant backwards from the Nation's policy goal of "a rapid, efficient, nationwide ... communication service with adequate facilities at reasonable charges ... for the purpose of promoting safety of life and property...."<sup>5</sup>

NASUCA supports the Commission's ruling to take Verizon's application off the automatic 60-day timeline.<sup>6</sup> Having determined that automatic grant of Verizon's applications is not in the public interest, the Commission should now provide for additional public comment, in particular once Verizon has provided data in response to the FCC's data request.<sup>7</sup>

At this point, there have been a number of Commission filings since the July 29 comment filing date. For example, Cbeyond, et al. have echoed many of the above concerns, while emphasizing their competitive issues.<sup>8</sup> And the Computer and Communications Industry Association ("CCIA") has concisely (but comprehensively) described reasons why Verizon's applications should not be granted.

NASUCA strongly agrees with Public Knowledge ("PK") that the Commission must determine the appropriate procedural path for this proceeding.<sup>9</sup> It may be a while before the Commission can appropriately resolve these issues, but given the importance of this proceeding, careful deliberation is appropriate. It must be recognized that Verizon's request is not for temporary or emergency relief.<sup>10</sup> Verizon wants a permanent change in the services of

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<sup>4</sup> The claim before the Commission is that it would cost too much, but – to put it charitably – Verizon has long-expressed a desire to do away with its copper network. See <http://stopthecap.com/2012/07/17/verizon-ceo-ponders-killing-off-rural-phonebroadband-service-rake-in-wireless-profits>. In addition, Verizon seems determined to act as if its application here had been approved for its entire territory. See Communication Workers of America ex parte (August 19, 2013).

<sup>5</sup> 47 U.S.C. § 153.

<sup>6</sup> Public Notice, Applications of Verizon New Jersey Inc. and Verizon New York Inc. to Discontinue Domestic Telecommunications Services Will Not be Automatically Granted, WC Docket No. 13-149 and 13-150; Comp. Pol. File Nos. 1112 & 1115, Aug. 14, 2013 (rel).

<sup>7</sup> With regard to the data request, although Consumer Advocates' representatives have provided Acknowledgments of Confidentiality for the Verizon data claimed to be confidential, Consumer Advocates expect the **non-confidential** data from Verizon to be telling. Further, without seeing the material, Consumer Advocates cannot concede that Verizon's designations are appropriate. As Public Knowledge states: "There are real costs to confidential treatment, affecting both the internal and external deliberations and discussions of members of the public, consumer advocacy groups, and competitors to the parties in a particular proceeding. Those costs are balanced by the benefits of protecting information that actually qualifies for confidential treatment, but the FCC must ensure that information that should be public is not swept under the shroud of confidentiality and kept from informing the public debate." PK ex parte (August 19, 2013) at 4.

<sup>8</sup> Cbeyond, et al. ex parte (July 31, 2013).

<sup>9</sup> See PK ex parte (August 19, 2013) at 1-3.

<sup>10</sup> Sec. 214(a) allows the Commission to grant temporary or emergency discontinuance.

customers in the areas covered by the applications. Those customers have already been harmed by Verizon's failure to restore its facilities, a factor the Commission cannot ignore.

The record in this proceeding will grow. But one area that does not appear to have been addressed up to now is the impact of Verizon's applications on its responsibilities as a Section 214(e) eligible telecommunications carrier ("ETC").<sup>11</sup> Section 214(e) requires that Verizon provide supported voice telephony service throughout its ETC service area, including access to e911 service. Additionally, Verizon must offer eligible low income consumers discounted Lifeline service. Whether grant of Verizon's Section 214(a) applications is in the public interest cannot be resolved without consideration of whether and how Verizon will continue to meet its ETC obligations in New York and New Jersey. Section 214(e) allows an ETC to request state commission approval to relinquish designation as an ETC, if the area is served by one or more other ETCs. Based on the available information, the New York and New Jersey communities covered by Verizon's applications do not appear to have a choice of affordable voice telephony service from other ETCs.

These are valid reasons for delaying or denying Verizon's applications. Verizon bears the burden, under Section 214(a), to show "that neither the present nor future public convenience and necessity will be adversely affected" by its change of service.<sup>12</sup> The record before the Commission already shows that granting Verizon's applications will "impair the adequacy or quality of service provided" in the areas covered by Verizon's request.<sup>13</sup>

The Commission's authority under Section 214(d) is broad, including that the FCC "may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require" so long as "the expense involved therein will not impair the ability of the carrier to perform its duty to the public." Verizon's duty to the public is shaped by federal law and policy, including Section 153 and Verizon's Section 214(e) ETC obligations, as well as by state law and policy. Given Verizon's vast size and resources,<sup>14</sup> the performance of its duty to the public will not be impaired by denying Verizon's applications.

Finally, NASUCA would submit that, rather than being for rogue trials of the IP transition (as characterized by Cbeyond<sup>15</sup>), Verizon's request is actually contrary to the spirit of the IP trials: Customers in the affected areas have their access to broadband services **restricted**, not enhanced. These services used to be available over the copper facilities Verizon wants not to replace. Verizon's actions should not be approved by the Commission.

Respectfully submitted,

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<sup>11</sup> 47 U.S.C. § 214(e).

<sup>12</sup> As noted above, Sec. 214(a) allows the Commission to grant temporary or emergency discontinuance. Neither is sought here.

<sup>13</sup> § 214(a).

<sup>14</sup> See

[http://www22.verizon.com/investor/webcast\\_2q\\_2013\\_quarter\\_earnings\\_conference\\_call\\_webcast\\_07182013.htm](http://www22.verizon.com/investor/webcast_2q_2013_quarter_earnings_conference_call_webcast_07182013.htm).

<sup>15</sup> See Cbeyond ex parte (July 31, 2013) (Verizon application in trial context).

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